IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19036 of 2014
and
M.P.No.1 of 2015

1.N.Sankar (Deceased)

2.Rani

3.Kumaran

4.Sumathi
(P2 to P4 substituted as LRs of deceased sole petitioner vide order dated 12.07.2022 in WMP.No.31371/2016 in WP.No.19036/2014) ...Petitioners

Vs

1.Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Rep. by its Managing Director,
3/137, Salaamedu, Vazahudhareddy,
Villupuram - 605 602.

2.The General Manager,
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Bye-Pass road (Vengikkal),

Thiruvannamalai.
3.Tamilnadu State Transport
Employees Pension Fund Trust,
Rep. by its Administrator,
Thiruvalluvar Illam,
Pallavan Salai, Chennai - 2. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the action of the respondents in insisting the petitioner to pay a sum of Rs.99,919/- towards unimplemented punishments of increment cut, imposed on the petitioner and also in refusing to settle him the arrears of pension and other terminal benefits on the ground that he did not pay the said amount of Rs.99,919/- as illegal, arbitrary and without jurisdiction and consequently direct the respondents to settle the petitioner forthwith the arrears of pension for 18 months, commuted value of pension, gratuity and the amounts payable under Employees Welfare Scheme and other terminal benefits, together with interest at the rate of 12% per annum.

For Petitioners : Mr.V.Ajoy Khose

For R1 & R2 : Mr.M.Aswin

For R3 : Mr.C.S.K.Sathish

ORDER

Heard Mr.V.Ajoy Khose, learned counsel appearing for the petitioners, Mr.M.Aswin, learned counsel for the first and second respondents and

Mr.C.S.K.Sathish, learned counsel for the third respondent.

2. The original petitioner, who was an employee under the respondent Corporation, had expired pending the Writ Petition and the petitioners 2 to 4, who are the legal heirs, have been substituted.

3. When the said employee had reached the age of superannuation, a sum of Rs.99,919/-, towards the monetary value of his unimplemented punishments, was withheld. When the late employee had sought for information with regard to such withholding of death-cum-retirement gratuity benefits, the respondent Corporation, in their reply dated 19.03.2014, had stated that since the value of the unimplemented punishments has not been repaid by the petitioner, the same has been withheld and that the benefits would be paid only after this amount is settled.

4. It is now stated by the learned counsel for the petitioner that subsequently, the legal heirs of the late employee have been paid with the death-cum-retirement gratuity benefits, after deducting the sum of Rs.99,919/-

and they are also now receiving the family pension.

5. The reason assigned by the respondent Corporation for withholding the death-cum-retirement gratuity benefits, that the monetary value of the unimplemented punishments are yet to be recovered from the late employee, is illegal, in view of various decisions of this Court, in which, it has been held that, withholding of the monetary benefits to a retired employee, on the ground that certain punishments have not been implemented, is illegal. In one such decision of the Hon'ble Division Bench of this Court in the case of ***The State Express Transport Corporation (Tamilnadu) Ltd., and others Vs. G.Senthil and another passed in W.A.(MD) No.1270 of 2020, dated 15.06.2021***, it has been held in the following manner:-

> *"9. Furthermore, the question as to whether the Management would be entitled to implement orders of postponement of increment, which was not implemented during the period when the workman was in service, was also considered in the case of **J.Arumugam (supra)** and it was held that the same cannot be done and it will be without jurisdiction. The operative portion of the judgment reads as follows:*
>
> > *"37. One more important aspect, which we*

> *wish to point out is that, the Management cannot plead ignorance of the fact that, on the date, when punishment was imposed on the workmen, the punishment was not capable of being implemented as workmen did not have the required remaining years of service. If that is so, the Management cannot take shelter under the explanation contained Clause 4 (1) (e) to suit its own convenience, and the workmen cannot be put in a disadvantageous position. In such circumstances, the Management cannot rely on the decision of the Hon'ble Supreme Court in* ***Kshetrabasi Mohanti (supra)*** *where, the Hon'ble Supreme Court considered the correctness of the order by substituting the punishment for a candidate, who was still in service. There, it was a case, where, it was not possible for the Corporation to implement the punishment, but, the case on hand, is a case, where, the Corporation was fully aware of remaining years of service in respect of each of the workmen, yet, chose to pass such orders of recovery. Thus, the Management, having failed to convert the punishment of stoppage of increment to that of order of recovery of monetary value, when the workmen were in service, it cannot turn around and say that those orders could be implemented by invoking Clause 25 (iv) (b) of the Certified Standing Orders."*

10. In the light of the above legal principle and having found that there is no provision in the Certified Standing Orders to pass orders of recovery at the verge of retirement or after retirement proposing to recover the unimplemented orders of punishment of postponement of increment, is wholly without jurisdiction. Hence, for the *reasons set out by the learned Single Bench as well as the reasons which we have observed supra, the order passed in the writ petition does not call for interference. The learned Single Bench has allowed the writ petition as prayed for, which would mean that the respondent workman is also entitled to claim interest at 18% per annum. In our considered view, 18% interest would be too exorbitant and we are of the view that a time frame can be fixed for the respondent-Management to settle the amount of Rs.75,900/- and accordingly directed to pay the said sum within a period of 12 weeks, failing which, the Management is directed to settle the amount together with the interest at the rate of 6% per annum from the date of order passed in the writ petition, namely, 28.07.2020, till the claim is settled."*

6. The aforesaid extract is self explanatory. As such, the decision of the Transport Corporation to withhold the death-cum-retirement gratuity benefits, on the ground that the value of the unimplemented punishments have not been recovered, cannot be sustained. Since the action taken by the respondent Corporation is illegal, the family of the late employee would be entitled for payment of interest. In the aforesaid decision in *G.Senthil,* the interest of 18%

ordered by the learned single Judge, has been reduced to 6% and this Court is of the view that a similar percentage of interest can be adopted for the present case also.

7. By adopting the principles laid down by the Hon'ble Division Bench in *G.Senthil's case (supra)*, the action of the respondents in withholding a sum of Rs.99,919/-, is hereby declared as illegal. Consequently, there shall be a direction to the respondents to forthwith pay the sum of Rs.99,919/- to the petitioners 2 to 4 herein, together with interest at the rate of 6% per annum, along with any other monetary benefits payable to the late employee, from the date of superannuation of the late employee, i.e. 29.02.2012, till the date of disbursal, within a period of 6 weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2022

Index:Yes/No
Speaking order/Non-speaking order

hvk

M.S.RAMESH,J.

hvk

To

1.The Managing Director,
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
3/137, Salaamedu, Vazahudhareddy,
Villupuram - 605 602.

2.The General Manager,
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Bye-Pass road (Vengikkal),
Thiruvannamalai.

3.The Administrator,
Tamilnadu State Transport
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai - 2.

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